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**The City of Chula Vista Development Services Department**  
**MEMORANDUM TO THE**  
**MOBILEHOME RENT REVIEW COMMISSION**

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Item No. 2 (Addendum #2)

Staff: Stacey Kurz

**DATE:** July 15, 2010

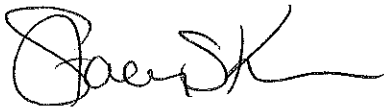
**SUBJECT:** RENT INCREASE FOR BRENTWOOD MOBILE HOME PARK-  
CONTINUATION OF MAY 19<sup>th</sup> & JUNE 16<sup>th</sup> HEARINGS FOR  
CONSIDERATION OF PROPOSED RENT INCREASES FOR TWO HUNDRED  
(200) AFFECTED SPACES OF BRENTWOOD MOBILE HOME PARK,  
LOCATED AT 1100 INDUSTRIAL BOULEVARD IN CHULA VISTA AND  
REQUEST FOR ADDITIONAL INFORMATION

The following submittal is attached for your consideration as an addendum to the staff report packet dated July 7<sup>th</sup>. All items submitted since the close of the public hearing is being provided as received but not accepted. It is the discretion of the Commission to determine whether to consider any materials submitted after the close of the public hearing process. Attached please find the following:

- Attachment 6 – Article by Bruce Stanton
- Attachment 7 – Letter from Brentwood Resident
- Attachment 8 – Staff request to Park Owner & response

Should you have any questions regarding the attached please contact my office at (619) 585-5609.

Sincerely,



Stacey S. Kurz  
Senior Project Coordinator

## CAN A PARK OWNER PASS THROUGH COSTS OF ELECTRIC OR GAS REPAIRS OR REPLACEMENTS TO HOMEOWNERS?

By: Bruce Stanton, Attorney

ABOUT THE AUTHOR: MR. STANTON HAS BEEN A PRATICING ATORNEY SINCE 1982, AND HAS BEEN REPRESENTING MOBILEHOME RESIDENTS AND HOMEOWNERS ASSOCIATIONS AS A SPECIALTY FOR OVER 20 YEARS. HIS PRACTICE IS LOCATED IN SAN JOSE, AND HE IS THE NEW CORPORATE COUNSEL FOR GSMOL

Questions often arise in connection with how repairs to gas or electric systems are handled in mobilehome parks where each space has its own gas/electric meter which is read by management, and the resident pays the park directly, rather than a serving utility such as Pacific Gas & Electric for use of energy. These parks, which operate what are called "submetered systems", are subject to special rules which derive from both the California Public Utilities Commission (CPUC) and California caselaw, which regulate the ability of parks to pass through any costs related to the energy systems to their residents. It is important for residents who live in such parks to understand the important protections which exist for their benefit. Note that regulation of water and water charges is not a part of this article, but is an entirely separate issue.

**Here is the basic rule to remember: A Park Owner is not entitled to receive a rent increase based upon expenses relating to the repair, replacement or upgrade of submetered energy systems.**

Many mobilehome parks have a master meter at the street which is read and serviced by the utility provider, with a system of submeters located within the park that read energy consumption at each individual space. The park owner is responsible for the repair, reading, maintenance and upkeep of the system located within the park property, and pays the master meter bill directly to the utility. The park then reads each individual meter and bills each resident for the amount of his or her usage on a monthly basis. The rates which the Park is permitted to charge are carefully regulated.

In *Rainbow Disposal Company v. Escondido Mobilehome Rent Review Board* (1998) 64 Cal. App. 4<sup>th</sup> 1159, at p.1166, the Court examined the relevant law and quoted a published decision of the CPUC entitled *Re Rates, Charges, and Practices of Electric and Gas Utilities Providing Services to Master-metered Mobile Home Parks* (1995) 58 Cal. P.U.C. 2d 709, 1995 WL 216917 (hereinafter "*Rates, Charges and Practices*"). In this ruling, known throughout the mobilehome industry as the "double-dip decision", the CPUC found in favor of three GSMOL members, and described the park owner-resident relationship in a master-metered park as follows:

"[Public Utilities Code section] 739.5 regulates the rates that master-metered mobile home parks with submetered utility systems may charge their tenants. This code section requires master-metered mobile home parks to charge tenants at the same rate the utility would charge the tenants for direct service. The discount is intended to cover the 'average costs' of park owners to provide submetered service, but is not to exceed the 'average cost' of the serving utility to provide comparable service to tenants directly served by the utility. The park owner must maintain and, as necessary replace the distribution system beyond the master meter. In addition, the park owner must maintain and read the submeters and provide each submeter customer with an itemized billing similar in form and content to bills provided by the public utility. Basically, within the mobile home park, the park owner performs the functions...of the public utility."

In *Rates, Charges and Practices*, the CPUC thus concluded that master-metered park owners are barred from recovering the costs of recovering the costs of improving their gas and electric systems through rent increases, since Public Utilities Code section 739.5 expressly limits their recovery to the amount derived from a "submetering discount" which is made available to park owners by the CPUC. In essence, the park owner is permitted to buy its energy from the serving utility "wholesale", and sell it to the tenants at a higher "retail" price which includes a monthly differential "discount". This discount amount is set by tariff, is currently about \$16.00 per space per month, and is provided to give park owners the funds needed to repair, maintain and improve the submeter system.

In *Rainbow*, the argument that rent boards may ignore, or are not subject to rulings of the CPUC was rejected, and the Court also noted that an order of the CPUC controls over a local ordinance. City hearing officers are thus bound by the CPUC ruling. The submetering discount has already provided the Park with all of the money necessary to effect the repairs to the electrical system. These funds have been flowing to the park owner each month for decades. If the Park has been unwise in its decision to use these funds for purposes other than as a utility reserve, then the Park must alone bear the consequences of its fiscal irresponsibility. But it cannot collect twice for the same thing. Further support for this rule is found in *Steiner v. Palm Springs Mobilehome Properties* (1997) Cal P.U.C. Decision No. 97-07-009, 1997 WL 449535, wherein the CPUC stated that if a hearing officer to award a rent increase to cover the costs of repairs or upgrades to a submetered utility system, he or she would have "impermissibly intruded on the constitutional and statutory ratemaking authority of the [PUC]. Thus, not only repairs or maintenance of the energy systems are covered, but also upgrades.

Some park owners attempt to differentiate between electrical expenses which pertain to the common area, and those which do not. But the CPUC has explicitly ruled that even common area repairs fall within the scope of the submetering discount. In *Robert Hambly, et al. v. Hillsboro Properties and City of Novato, Cal. P.U.C. Decision No. 01-08-040 (August 23, 2001)*, the CPUC addressed the issue of whether conduit and trenching expenses incurred in the course of operation, maintenance and repair of park common areas, including the pool, clubhouse and street lighting system, could be charged to tenants without CPUC approval, and ruled that it would be improper to charge residents for common area energy system costs. It noted that the park owner's remedy would be to raise the issue of common areas costs at the next General Rate Case proceeding, wherein the CPUC sets rates for the submetering discount.

If a park owner wishes to give maintenance responsibilities for the energy system back to the serving utility, the process for doing so is set forth at Public Utilities Code section 2791-2799, and this "take back" procedure has been the subject of recent proposed legislation which GSMOL shall continue to monitor. This is complex issued to be sure, but one which should be understood. Residents should be on the lookout for any attempt by a park owner to charge them for repairs, maintenance or upgrades to gas or utility systems for which the park has already been paid over the years, and should quote the above authority to their local officials to put a stop to any such attempts.

To Whom It May Concern:  
Regarding Brentwood mobile home rent increase

I own a 1975 well maintained mobile home in Brentwood Park. I would like it to be known when the residents of Brentwood where informed that the meters were going to be replaced or changed the park did not say anything about upgrading the meters. When the meters were upgraded the company who installed my meter removed cables that went to my A/C unit and some other cables. Leaving my home without any A/C, Heat (Furnace) and my washing machine stopped working. I informed the management (Brentwood) of this problem and I was told that I would have to go get my own electrician and pay for the ability to have A/C, heat and a working washing machine. Even though My A/C, Furnace and washing machine worked perfectly fine before the new meters were put in. This cost me \$650.00. I'm a single parent and this was a hardship on me. The electrician had to install new cables for the A/C install a new fuse box with additional things. Not to mention the time to get quotes regarding this matter. Now they want to increase the rent. I'm not sure if there were any other residents that had problems similar to mine.

I would like to thank you in advance regarding my concerns.

Thank you,

A Brentwood Resident

CITY OF CHULA VISTA


  
 Redevelopment  
& Housing

July 14, 2010

Gregory L. Johnloz  
Real Estate Management  
4637 E. Sunset Drive  
Phoenix, Arizona 85028

**MOBILEHOME RENT REVIEW COMMISSION HEARING; BRENTWOOD MH PARK**

Dear Mr. Johnloz:

This correspondence is in relation to the proposed rent increase of 200 spaces at the Brentwood Mobilehome Park. Per Chula Vista Municipal Code §9.50.073 (Factors to Consider in Fixing Space Rent Through the Hearing Process), the Commission has the authority to request information and/or documentation related to the factors that will assist them in making such determination.

It is requested that you provide information, if any exists, to determine whether expenses incurred for the installation of replacement and upgrade of the electrical distribution system fall into the following categories and at what cost, as defined in by the Public Utilities Commission Decision 04-04-043, April 22, 2004, Attachment A:

- ◆ Costs related to common area
- ◆ Purchase and capital-related installation, repair and maintenance costs for: pedestals, meter sockets, circuit breakers, service panels, and support pads.
- ◆ Trenching (excavation) for (1) underground service reinforcements, as defined by Rule 16.F.1; and (2) expansion of sub-metered distribution and services under Rules 15.B.1.a and 16.D.1.a(2).1 (Trenching for maintenance and repair is included in the discount)
- ◆ Conduits for (1) service reinforcements, as defined by Rule 16.F.1; and (2) expansion of sub-metered distribution and services under Rule 15.B.1.a and

<sup>1</sup> PG&E's policy is that master-metered mobile home parks cannot be expanded by the addition of additional sub-metered spaces.

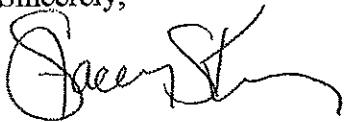
Mr. Johnloz  
July 14, 2010  
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- 16.D.1.a(3).2 (Capital-related costs for initial installation only, not maintenance and repair, which are already covered by the discount).
- ◆ Substructures and protective structures for (1) service reinforcements as defined by Rule 16.F.1; and (2) expansion of sub-metered distribution and services under Rule 15.B.1.a and 16.D.1.a.3
  - ◆ Capital investment related costs for the cost components listed in this Section 4 if not otherwise directly recovered by the MHP owner, such as:
    - depreciation
    - return on investment
    - taxes related to capital investment (including property taxes).
  - ◆ Operations and maintenance expenses for the interconnection between the meter set and each sub-metered dwelling unit (mobile home), including associated taxes.
  - ◆ Other taxes (not related to capital investments) not otherwise directly recovered by the MHP owner associated with operations and maintenance that are the responsibility of the owner of the master-metered mobile home park under the applicable tariffs, e.g., Electric Rules 15 and 16.

Please provide any additional information, if it exists, to my office prior to or at the hearing scheduled for 6 p.m. on July 15, 2010.

Should you have any questions, please contact my office at (619) 585-5609.

Sincerely,



**STACEY S. KURZ**  
Senior Project Coordinator

cc: Simon Silva, Deputy City Attorney

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<sup>2</sup> PG&E's policy is that master-metered mobile home parks cannot be expanded by the addition of additional sub-metered spaces.

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**Stacey Kurz**

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**From:** [REDACTED]  
**Sent:** Wednesday, July 14, 2010 3:52 PM  
**To:** Stacey Kurz  
**Cc:** [REDACTED]  
**Subject:** Re: Brentwood - Request for Additional Information

Stacey,  
Here is my response to the inquiries included in your letter dated today.

I was surprised to receive your letter of the 14th. It is not only the day before the scheduled hearing, it assumes the Commission has asked the questions and that the data is readily available in such a format. Due to our good working relationship I am assuming the Commission members or the city attorney have requested you ask the series of questions about the electric expense that is a major component of the rent application. Thus, I will endeavor to answer the substance of your inquiries.

The simple and best answer to your series of questions is that [a] Dr. McCann's report specifically addresses and answers what expense is recoverable in rent and which expense is recovered through the differential in billing rates set up by the CPUC and [b] each of the out of pocket expenses is corroborated by the invoices provided with the application. All of those invoices and the expense documentaion were reviewed by Dr. McCann as part of his investigation to prepare the report that was submitted back in May at the first meeting of the Rent Commission. The rate of return for that out of pocket capital outlay is as set forth in the application. The time frame for recovery is forty [40] years, as set forth in the application. The rate of return and time for recovery remain very conservative and keep the increase manageable for the park's residents.

I would also just reiterate what Bill Dahlin said in his letter of July 12—that the denial of the tenant initiated complaint by the CPUC means that the entirety of the expense as submitted and clarified by Dr. McCann's report are properly part of the capital cost to be recovered by the park. I hope the foregoing fully responds to your questions. We would, obviously, like this matter resolved tomorrow evening.

See you tomorrow night.  
Greg

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